

## DISTRICT OF NEVADA

Defendants.

## ORDER

<sup>1</sup>Plaintiffs argue this was an unsafe speed but do not allege the speed limit. (*See id.*).

1 Samson Gebremedhin, who was also trying to beat the yellow light. (*Id.* ¶¶ 9, 11, 13).<sup>2</sup> Traffic in  
2 front of Gebremedhin and Razon had stopped at the Cameron Street intersection, however. (*Id.*  
3 ¶ 14). Gebremedhin struck a third vehicle that had stopped at the intersection, and Razon struck  
4 Gebremedhin immediately thereafter. (*Id.* ¶¶ 14–15).<sup>3</sup> Ambassador had not provided visible or  
5 accessible safety belts for Plaintiffs. (*Id.* ¶ 16). Villanueva sustained lacerations to her face and  
6 legs from broken glassware, serious injuries to her head, neck, shoulder, upper back, mid-to-  
7 lower spine, and legs, as well as closed head trauma, and was knocked unconscious. (*Id.* ¶ 20).  
8 Daniels struck his left knee violently, lacerating it and aggravating pre-existing injuries from his  
9 military service. (*Id.* ¶ 21). Plaintiffs allege Razon and Gebremedhin were negligent for, *inter*  
10 *alia*, failing to obey traffic lights, failure to obey speed limits, failure to provide safety belts for  
11 paying passengers, failure to keep a proper lookout, failure to avoid a collision, and failure to  
12 notice the presence and proximity of the vehicle in front of him. (*See id.* ¶¶ 23, 39).

13 Plaintiffs sued Defendants in diversity in this Court for negligence. All Plaintiffs are  
14 California citizens, and all Defendants are Nevada citizens. (*See id.* ¶¶ 4–9). The Nevada  
15 Secretary of State website confirms that Ambassador is a domestic limited partnership and  
16 Western is a domestic corporation. *See* Nevada Secretary of State (Jan. 22, 2013, 8:21 AM),  
17 <http://nvsos.gov/sosentitysearch/CorpSearch.aspx>. Plaintiffs list four nominal causes of action  
18 for negligence. Razon and Gebremedhin are listed under the first and third counts, respectively,  
19 and their employers, Ambassador and Western, are listed under the second and fourth counts,  
20 respectively, under a respondeat superior theory. Defendants have moved to dismiss or to strike  
21 the Complaint for failure to comply with Rule 4 and Local Rule 10-2.

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24 <sup>2</sup>Plaintiffs also argue that Gebremedhin was traveling at an unsafe speed. (*See id.*).

25 <sup>3</sup>The driver of the third vehicle is not a party and is not identified in the Complaint.

## II. LEGAL STANDARDS

### A. Rule 4(m)

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

### B. Local Rule 10-2

An attorney not admitted to this Court may practice only by leave of the Court. Local R. 10-2(a). A petition for admittance *pro hac vice* must confirm that the attorney is not a member of the State Bar of Nevada, is not a Nevada resident, is not regularly employed in Nevada, is in good standing to practice before the bar of any jurisdiction in the U.S., and an active member of the Nevada bar is associated as counsel of record. *Id.* While the petition is pending, the attorney may take no action apart from filing the first pleading or motion. Local R. 10-2(c). The Clerk shall not issue any summons or writ while the petition is pending. *Id.* Attorneys have forty-five days to comply with the rule after making their first appearance. Local R. 10-2(e). Failure to comply may result in the striking of any and all documents filed by the offending attorney. Local R. 10-2(k).

## III. ANALYSIS

Defendants argue that Plaintiffs' attorneys are not licensed to practice law by the Supreme Court of Nevada, or in the federal courts within Nevada, and have not been admitted *pro hac vice* in the present matter. Defendants note that the Complaint failed to note that Local Rule 10-2 had been complied with or would be complied with within the required time, and that the Clerk entered notices to each of Plaintiffs' counsel on August 20, 2012 noting that verified petitions for admittance *pro hac vice* were due October 4, 2012. Despite these warnings, Plaintiffs' counsel have not submitted *pro hac vice* petitions. Two days before Defendants filed the present motion,

1 the magistrate judge granted Plaintiffs' separate motions to substitute a Reno, Nevada attorney  
2 for their former counsel, and former counsel have been terminated.

3 Defendants also argue that Plaintiffs failed to serve the Summons and Complaint within  
4 120 days of filing the Complaint, as required by Rule 4(m). Defendants note that on August 21,  
5 2012, the Clerk entered a notice into the docket noting that no summons was issued because  
6 Plaintiffs' attorneys were not authorized to practice before the Court and that a non-admitted  
7 attorney could take no action beyond filing an initial pleading except to file a petition for  
8 admittance *pro hac vice*. Not deterred, Plaintiffs' counsel filed proposed summonses. The Clerk  
9 entered another notice noting that counsel had used the wrong forms (from the District of  
10 Nebraska) and had violated Local Rule 10-2(c) by filing additional pleadings without applying  
11 for *pro hac vice* admission. Plaintiffs' counsel took no further action and did not petition for  
12 admission. On December 21, 2012, the Clerk entered its notice of intent to dismiss pursuant to  
13 Rule 4(m) on January 20, 2013 because no proper proof of service had been filed. Only on  
14 January 15, 2013, five days before the Rule 4(m) deadline, did Plaintiffs move to substitute  
15 counsel. The same day, Plaintiffs' counsel, still without having been admitted, filed another  
16 proposed summons, which the Clerk erroneously issued. The next day, the magistrate judge  
17 granted Plaintiffs' motion to substitute local counsel. Plaintiffs' now former counsel, which had  
18 never been admitted, and which had been withdrawn, then filed alleged certificates of service  
19 upon Ambassador and Western, as well as a "Declaration of Diligence" as to failed attempts to  
20 serve Razon.

21 The Court first notes that the Clerk should not have issued the summonses on January 15,  
22 2013 at a time when Plaintiffs were represented only by non-admitted counsel who had not even  
23 filed *pro hac vice* petitions. The Court strikes those summonses. Second, even if the summonses  
24 had been validly issued, Attorney Kalinin, who had withdrawn from the case, and who had never  
25 even filed a petition to appear in the present case, cannot have filed the certificates of service or

1 the "Declaration of Diligence." Those filings are also stricken. The Complaint is also stricken  
2 under Local Rule 10-2(k) and the case dismissed without prejudice under Rule 4(m). There is no  
3 good cause preventing dismissal. Counsel made no reasonable attempt to comply with Rule  
4 4(m). Plaintiffs' new local counsel may attempt to refile the case in this Court or another.

5 **CONCLUSION**

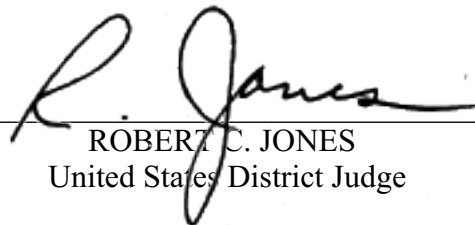
6 IT IS HEREBY ORDERED that the Motions to Dismiss (ECF Nos. 17, 23) and the  
7 Motion to Quash Service (ECF No. 22) are GRANTED. The case is DISMISSED without  
8 prejudice under Rule 4(m).

9 IT IS FURTHER ORDERED that every filing in this case by Attorneys Andrey Kalinin,  
10 Deborah Kong, and/or Miguel Barquera are STRICKEN, as is the Summons (ECF No. 14) issued  
11 by the Clerk.

12 IT IS FURTHER ORDERED that the Clerk shall close the case.

13 IT IS SO ORDERED.

14 Dated this 11th day of March, 2013.

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17 ROBERT C. JONES  
18 United States District Judge  
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